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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rick Fletcher

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EXAMINER

ENGLAND, DAVID E

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/518,221		FLETCHER ET AL.	
	Examiner		Art Unit	
	David E. England		2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 16 – 20 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al. U.S. Patent No. 6047321 (hereinafter Raab) in view of Desai et al. (5781703) (hereinafter Desai) in further view of Engel et al. (6115393) (hereinafter Engel).
3. Referencing claim 16, as closely interpreted by the Examiner, Raab teaches a method for distributed remote network monitor (dRMON) in a LAN comprising:
4. ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives, (e.g. col. 4, lines 5 – 57);
5. on a periodic basis having the dRMON agents forward statistics and/or captured packets to said dRMON proxy, existing somewhere on the LAN, (e.g. col. 4, lines 5 – 57); and

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6. combining received agent data thereby creating at the dRMON proxy a view that a prior, art stand-alone RMON probe would have if all the ES were on the same LAN segment with it, (e.g. col. 4, lines 5 – 57), but does not specifically teach deploying dRMON agents that communicate with a dRMON proxy within ESs to be monitored. Desai teaches deploying dRMON agents within ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives, (e.g. col. 2, line 45 – col. 3, line 36, *“Intelligent Remote Agents 18 comprise computer programs that are tangibly embodied in or readable from a computer-readable medium or carrier, e.g. fixed and/or removable data storage and/or data communication devices. These computer programs may be retrieved from such devices into the random access memory of one or more of the computer systems 12 for execution. These computer programs comprise instructions which, when read and executed by a computer system 12, cause the computer system 12 to perform the steps necessary to execute the steps or elements of the present invention.”* & col. 6, line 62 – col. 7, line 26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Desai with Raab because it would be more cost effective and could have less areas for errors if the agents resided in the end system that it was collecting information from as opposed to having two devices. This would also result in only having to utilize software for the agent and not hardware and software on a separate device. Engel teaches communications between types of dRMON agents and type of dRMON proxy, (e.g., col. 27, lines 15 – 61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Engel with the combine system of Raab and Desai because when a new node is reported by a Network Monitor, the Management Workstation needs to have the previous location

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information in order to know which Network Monitors to involve in autotopology. Also, the history makes possible the correlation of the addresses and it makes possible duplicate address detection.

7. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raab, Desai and Engel as applied to claim 16 above, and in further view of Dobbins et al. (5790546) (hereinafter Dobbins).

8. As per claim 17, as closely interpreted by the Examiner, Raab, Desai and Engel teach all that is similar in nature to claim 17 in regards to communication between dRMON agents and a dRMON proxy with in ESs but they do not specifically teach said dRMON proxy can mimic the SNMP responses of a prior art non-distributed RMON probe so that existing network application management software can interact with the proxy as though said proxy were a prior art probe. Dobbins teaches said proxy can mimic the SNMP responses of a prior art non-distributed RMON probe so that existing network application management software can interact with said dRMON proxy as though said dRMON proxy were a prior art probe, (e.g. col. 16, lines 4 – 26). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Raab, Desai and Engel because it would be more efficient for a system to utilize the same functions that a probe has and apply them to a proxy so have all functions of both devices in one device that could save time on transmission time and prevent errors in transmissions to and from the proxy and probe. Furthermore, Applicant discloses that this has been used in the prior art as stated in the claim itself.

9. As per claim 18, as closely interpreted by the Examiner, Raab, Desai and Engel teach all that is disclosed above but does not specifically teach in an dRMON Managers a user is provided with the ability to combine ports and hosts in order to create Virtual LAN (VLAN) definitions to cause the monitoring function to behave as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON proxy in this embodiment creating and maintaining several such views with each appearing as one interface to RMON Management applications. Dobbins teaches in an dRMON Managers a user is provided with the ability to combine ports and hosts in order to create Virtual LAN (VLAN) definitions to cause the monitoring function to behave as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON proxy in this embodiment creating and maintaining several such views with each appearing as one interface to RMON Management applications, (e.g. col. 9, line 13 – col. 10, line 5 & col. 17, lines 28 – 67). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Raab, Desai and Engel because it would be more convenient for a system to utilize the functions of VLAN's so a user in a specific user group does not have to be connected to a same segment as the group to which it belongs to. Therefore allowing a new user and existing users the convenient of being stationed anywhere in the system and allowing the system to perceive as though the user was on the same segment.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab, Desai and Engel as applied to claim 16 above, and in further view of Umetsu (5751963).

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11. As per claim 19, as closely interpreted by the Examiner, Raab, Desai and Engel do not specifically teach said dRMON agents perform continual response time monitoring and forward the results to the dRMON Proxy. Umetsu teaches said dRMON agents perform continual response time monitoring and forward the results to the dRMON Proxy, (e.g. col. 4, line 50 – col. 5, line 14). It would have been obvious to one skilled in the art at the time the invention was made to combine Umetsu with the combine system of Raab, Desai and Engel because it would be more efficient for a system to have continual updates on network activity that could aid in the efficiency of network data transferring in network peak times.

12. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab, Desai and Engel as applied to claim 16 above, and in further view of Nugent (6076131).

13. As per claim 20, as closely interpreted by the Examiner, Raab and Desai do not specifically teach said agent software utilizes native OS APIs to gather information about the ES that could not be gathered via packet capture and analysis, said information being selected from the group consisting of:

14. (1) Network protocol stack configurations and NIC configurations including problematic situations;

15. (2) Application information ranging from what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc.;

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16. (3) System information such as memory, CPU, disk space, current resource utilizations, etc.; and

17. (4) System performance metrics.

18. Nugent teaches said agent software utilizes native OS APIs to gather information about the ES that could not be via packet capture and analysis, such as:

19. (1) Network protocol stack configurations and NIC configurations including problematic situations, (e.g. col. 9, lines 30 – 61). It would have been obvious to one skilled in the art at the time the invention was made to combine Nugent with the combine system of Raab and Desai because it would be more efficient for a system to analyze information that could have errors in the system so to lower the probability of a system crashing or transmitting faulty information across the network. Engel teaches

20. (2) Application information ranging from what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc., (e.g. col. 14, lines 26 – 65);

21. (3) System information such as memory, CPU, disk space, current resource utilizations, etc., (e.g. col. 14, lines 26 – 65); and

22. (4) System performance metrics, (e.g. col. 15, line 41 – col. 16, line 56). It would have been obvious to one skilled in the art at the time the invention was made to combine Engel with the combine system of Raab, Desai and Nugent because it would be more efficient for a system to gather as much information about a system and its ES so if an error or an upgrade is needed it would be more convenient to find the system that require these fixes or modifications.

Response to Arguments

23. Applicant's arguments filed 10/21/2005 have been fully considered but they are not persuasive.

24. In the Remarks, Applicant argues in substance that Raab does not anticipate nor render obvious a method for distributed remote network monitoring comprising, “deploying dRMON agents that communicate with a dRMON proxy within ESs to be monitored said agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives.”

25. As to part 1, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, Raab is not relied on to teach “deploying dRMON agents that communicate with a dRMON proxy within ESs to be monitored.”

26. In the Remarks, Applicant argues in substance that Desai in further view of Engel do not teach or suggest a modification of Raab that would remedy the deficiencies of Raab noted above. Engel only teaches a method and apparatus for monitoring network communication. The Rejection further states that Desai teaches deploying dRMON agents within ES's. Even if the Examiner's allegations regarding the teachings of Desai reference and Engel reference are

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correct, the combination of Raab, Desai, and Engel would not render the current invention obvious within the meanings of 103 rejection.

27. As to part 2, Examiner would like to draw the Applicant's attention to the above rejection. In which it is stated that Desai teaches deploying dRMON agents within ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives and that Raab and Engel are not specifically relied on for these teachings. Furthermore, Applicant's arguments with regards to Desai fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DE



David E. England
Examiner
Art Unit 2143



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